

## **REMARKS/ARGUMENTS**

Claims 1-5, 9, 14, 15, 17 and 18 remain in the application, all of which stand rejected. Claims 6-8, 10-13, 16, 19 and 20 have been cancelled.

### **1. Finality of Office Action Believed Premature**

The finality of the Office Action dated January 13, 2005 is believed to be premature. On August 4, 2004, Applicants filed an Amendment that 1) cancelled some claims, and 2) merged other claims. No other amendments were made.

In response to Applicants' Amendment, the Examiner withdrew his previous rejections and issued new ones. The Examiner also made his rejections final.

MPEP 706.07(a) states, in part:

...second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

In this case, the Examiner's new ground of rejection was not necessitated by Applicants' amendment of the claims, as all of the claims appeared in some form in Applicants' original application. Nor was the Examiner's new ground of rejection based on information submitted in an Information Disclosure Statement. Applicants therefore ask the Examiner to withdraw the finality of his Office Action.

### **2. The Rejection of Claims 1-4 Under 35 USC 103(a)**

Claims 1-4 stand rejected under 35 USC 103(a) as being unpatentable over Chuah (US Pat. No. 6,377,548) in view of Tello et al. (US Pat. No. 6,548,444; hereinafter "Tello").

With respect to claim 1, the Examiner asserts that Chuah teaches "selecting a requested level of service for a transaction" in column 33, lines 41-56, where Chuah states:

Upon receiving an associate request frame from a wireless mode, after the AP has successfully authenticated the wireless modem. . . if it is desirable to provide different QoSs to different users (albeit potentially from the same wireless modem), then each user is given a different connection identity.

More specifically, Chuah teaches that different QoSs may be assigned to *different users or different connections of a user*. However, Chuah does not teach the assignment of different QoSs at the more granular level of different "transactions".

The Examiner further asserts that Chuah teaches "program code for assigning said requested level of service to said transaction" in FIG. 16. Applicants respectfully disagree. What Chuah's FIG. 16 discloses is the assignment of "service tags" to each of a node's packets. However, these service tags do not indicate QoSs. Rather, "A service tag is used to schedule the transmission order of the packets from the hosts. . .". See, Chuah, col. 9, lines 61-63.

Finally, the Examiner admits that Chuah fails to teach "prompting a user to select a requested level of service for [a] transaction". However, the Examiner asserts that this is taught by Tello, which teaches "prompting the user at a data terminal to select a destination, password, and call type. . .". See, Tello, Abstract. Applicants respectfully disagree. The selection of a "destination, password, and call type" has no bearing on the selection of a "requested level of service for [a] transaction".

The Examiner's position seems to be that Chuah's disclosure that a QoS may be assigned to a user, in combination with Tello's disclosure that *something* may be selected by a user, makes it obvious to prompt a user to select a requested level of service for a transaction. However, Applicants believe that such a jump is wholly unsupported by the teachings of Chuah and Tello. This is simply not taught (nor suggested) by Chuah and Tello. Claim 1 is therefore believed to be allowable over their teachings.

Claims 2-4 are believed to be allowable at least for the reason that they depend from claim 1.

### 3. The Rejection of Claims 5, 9, 14, 15, 17 and 18 Under 35 USC 102(e)

Claims 5, 9, 14, 15, 17 and 18 stand rejected under 35 USC 102(e) as being unpatentable over Chuah (US Pat. No. 6,377,548).

With respect to claim 1, the Examiner asserts that Chuah teaches the selection of a requested level of service, based on user identification, in col. 33, lines 41-56. The Examiner further asserts that Chuah teaches "program code for assigning said requested level of service to said transaction" in FIG. 16. Applicants respectfully disagree.

What Chuah's FIG. 16 discloses is the assignment of "service tags" to each of a node's packets. However, these service tags do not designate QoS. Rather, "A service tag is used to schedule the transmission order of the packets from the hosts. . .". See, Chuah, col. 9, lines 61-63.

With respect to QoS, Chuah states:

. . . If it is desirable to provide different QoSs to different connections from the same user, then different connection cookies are assigned to the same user; similarly, if it is desirable to provide different QoSs to different users (albeit potentially from the same wireless modem), then each user is given a different connection identity.

Chuah therefore discloses 1) the assignment of different service tags to different packets, and 2) the respective assignment of different QoS cookies or identities to different connections or users. Chuah does not disclose the assignment of QoS tags to packets. Claim 5 is therefore believed to be allowable over Chuah's teachings.

Claim 9 is believed to be allowable at least for reasons similar to why claim 1 is believed to be allowable.

Claim 14 is believed to be allowable at least for reasons similar to why claim 5 is believed to be allowable. In addition, claim 14 is believed to be allowable in that Chuah does not disclose "program code for reading said requested level of service from said service tag" or "program code for directing said transaction over said network based on said requested level of service read from said service tag." The Examiner asserts that the former is taught by Chuah at col. 30, lines 59-61.

However, these lines only teach the assignment of service tags to packets. As already discussed, Chuah does not teach that the service tags incorporate QoS designators.


The Examiner asserts that Chuah teaches the direction of a transaction based on a requested level of service read from a service tag at col. 31, lines 13-15, and in FIG. 15A. Applicants respectfully disagree. Chuah teaches the direction of packets based on service tags, but does not teach the incorporation of QoS designators into the service tags.

Claims 15, 17 and 18 are believed to be allowable at least for the reason that they depend from claim 14.

#### 4. Conclusion

Given the above Amendments and Remarks, Applicants respectfully request the issuance of a Notice of Allowance.

Respectfully submitted,  
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